

**USDA Proposes to Close Loophole on Retail Pet Sales
APHIS Stakeholders Teleconference Call May 10, 2012**

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Number of Speakers: Multiple

Operator: We will open that to question and answer session and instructions will be given at that time. I would now like to turn the conference over to Rebecca Blue, Deputy Under Secretary for Marketing and Regulatory Programs at USDA. Ma'am you may begin.

Rebecca Blue: Okay thank you, and thank everyone for joining the call this afternoon. I am sure a number of you have already had an opportunity to take a look at our press release and our Q&A's that we shared with folks earlier today announcing our intent to close a loophole that allows the remote retail pet sales without regulatory oversight. So given the broad interest in this issue we thought it would be a good idea to get folks together for a stakeholder call today to give you a little overview of this proposed rule that's going to be published next week in the Federal Register and then we'll follow up with some question and answer portions as well.

We have here this afternoon Kevin Shea, APHIS's associate administrator, Christine Jones, Animal Care national enforcement coordinator, Dr. Gerald Rushin who was instrumental in developing our proposed regulation and Hallie Zimmers with our public affairs office at APHIS.

So as I mentioned before this proposed rule that APHIS is putting forward seeks to revise the definition of retail pet stores in the Animal Welfare Act so that the definition applies to anyone who is selling pets to buyers who are coming to their facilities to observe the animals in order to ensure their health and welfare. I know that folks are probably aware that the current definition of retail pet stores was developed more than forty years ago, obviously pre-dating the internet. So with that, we are taking this proposed rule in order to kind of go after that loophole which would allow internet sales to be sight unseen, allow folks to be purchasing pets sight unseen. So with this the proposed rule really is intended to get back to the original intent of the definition and really modernize our regulations to reflect our current business practices. So based on that original intent of the Animal Welfare Act, internet dealers who would be selling animals sight unseen shouldn't qualify for an exemption from the federal regulation, because the public doesn't have the opportunity to go in and observe the health and welfare of the animal prior to purchase. So as part of this proposed rule, we are seeking to change that for hobby, small hobby breeders' licensing exemption by increasing that number also from the breeding females from three to four. So also I just want to be clear that under this proposed rule this would mean that if a facility has four or fewer breeding females, cats or small exotic or wild mammals they would be considered then small hobby breeders and not subject to the federal regulation, regardless of whether or not those are sold at retail or wholesale. So this also allows us to focus our resources really on those internet based commercial breeders that present the greatest risk for noncompliance based on the animal welfare regulations.

So I also think it's important to clarify more specifically what we mean when we say internet sales. So under this proposed rule, it is okay for breeders to continue to advertise pet sales via the internet and in the newspaper. They would not need to be regulated by APHIS as long as the public has the opportunity to actually come into their facilities and

observe their animals prior to purchase and taking custody of the animals. However, if a breeder does sell just one dog over the internet sight unseen, they would be subject to the federal regulations unless they qualify for the exemption of the hobby breeder. So with that I would ask the operator to open it up for question and answers so that we can have our folks here address any of those questions that you might have.

Operator: Thank you ladies and gentlemen. If you would like to ask a question at this time, please press star, then the number one on your touch tone telephone. And if your question has been answered or you wish to remove yourself from the queue, you may press the pound sign. Our first question comes from Cathy Liss with Animal Welfare; your line is open.

Cathy Liss: I had two questions. One is, you mentioned that-- Number one, I would like to back up and say thanks very much to USDA and Animal Care that this is a long overdue and much needed change and we embrace the idea. And I had a couple of quick questions. One was, you mentioned that the public has the opportunity to see the premises and I wonder if you can clarify that, because while they may have the opportunity, obviously and in large part perhaps are not taking advantage of that, and I wonder if that's going to be defined. And secondly, I wonder if you have some estimates on how this will change the number of licensed breeders?

Kevin Shea: Hi Cathy, this is Kevin Shea.

Cathy Liss: Hi Kevin.

Kevin Shea: In terms of the numbers, we think about 1400 people who now sell this way and don't have a license would have to come under regulation. But on the other side, there is a little subtraction of about 600 who now have four breeding females and under the new regulation and they would now be exempt. So the net is about 900 would come under. But we really believe, of course, that the 1400 coming under regulation are really more important targets for our oversight than simply ones who have just one more breeding female than are currently allowed. In terms of your question about the opportunity, I think what we contemplate there is that literally a person will pick up the dog and see the dog there. It's not that they can waive their opportunity, so to speak, and agree that, okay, I will pick it up 500 miles from here and never see the dog. That's not the theory. I think if the seller is doing that, then they certainly don't qualify for the exemption. They are not a retailer as we are defining them if that is how the transaction takes place. Does that answer your questions Cathy?

Cathy Liss: Yes, thanks very much, so if that happens even once off the premises?

Kevin Shea: Yes if you sell one dog a year off premises then you no longer qualify for the exemption as a retailer.

Cathy Liss: Okay, thank you very much, I appreciate it.

Operator: Thank you. Our next question comes from Tina Perriguet with United States Working Dog Foundation; Your line is open.

Tina Perriguet: Hi. Actually I have several questions. I would like, my first one is just a procedural question: Is this kind of typical policy and procedure, to give stakeholders some twenty minutes to review regulatory changes, prior to the conference call, which is all of the time that I had to even try to look at this before this call started. I am just wondering if that's typical and if it is, I would like to request that policy and procedure be changed to give stakeholders at least 48 hours to review any proposed regulatory change before a conference call like this is convened.

Kevin Shea: Our response to that: We are proposing the rule and it will be published in the Federal Register in a few days and there will be a comment period, a 60-day comment period. So the rule is not effective and I want to make that clear if there is any misunderstanding. The rule is not effective now - it is simply being proposed. So you will have this opportunity to ask any questions today of course but there will be a full 60-day comment period and you can certainly seek clarification any time during that 60 days before the comment period is up. So this is certainly not your only opportunity to let us know what you think. This is really almost a bonus opportunity, so to speak, because the official comment period hasn't even opened yet.

Tina Perriguet: I understand that part of the procedure; I'm just a little bit surprised that, that - this is my first time I've been called in on a conference call and we had twenty minutes to review what was going to be discussed. I thought it was a surprisingly short time, so that's my comment in that regards.

Christine Jones: This is actually ... we were just doing this for a courtesy because we do know there was such a wide range of interests so we wanted to be able to actually brief folks and then we are happy to answer the questions, but as Kevin mentioned the comment period will just be getting underway next week. But we were actually using this just as a courtesy to brief folks upfront because we did know there was such an interest in this issue. So actually typically with our rollout this is how we do it, we want to make sure that we're getting to the stakeholders on the day before the announcement and being able to give them a briefing.

Tina Perriguet: Okay, you know, I appreciate your feedback. Again, it's my opinion that it would be reasonable and beneficial for all concerned if the stakeholders had more time in this, but I just wanted to say that for consideration. As a follow-up, since I have not really had time to peruse it in detail, when referencing breeding females, how is that defined? At what age, what's the definition of that?

Kevin Shea: We'll ask Dr. Rushin to address that.

Dr. Gerald Rushin: Yes, good afternoon. This is Dr. Rushin here. We are defining breeding females as we currently define them in wholesaling. The dogs that have the ability to breed. The breeding female-- Of course you look at the age of the dog and also

you know the condition of the dog, but if the dog has ability to breed, it is defined as a breeding female.

Tina Perriguey: Have you assigned an age to that?

Dr. Gerald Rushin: No, we have not.

Tina Perriguey: Okay, I only asked because often when it comes to regulation and law regarding breeding, and I am using my question on the breeding females definition, the way it has been defined can be absolutely ludicrous, you know, where they call a four-month-old female a breeding female. I think on behalf of working dog breeders, trainers and handlers, in our world it's a standard protocol to keep dogs intact at least eighteen months, okay, and often throughout their lives for many, many reasons, and I don't know how much you want to get into that here. But I think the definition of a breeding female needs to be discussed at great length, and I think that the working dog definition needs to be given much more weight than it has been.

Kevin Shea: We would really like to be able to get to as many folks as we can today and those are the kind of details that we would really like to hear from you in your comments during the comment period.

Tina Perriguey: Okay, I will let some other people jump in and thank you for your feedback.

Operator: Yes our next question comes from Tracie Letterman with the Humane Society of US; your line is open.

Tracie Letterman: Hi this is Tracie Letterman from the Humane Society of the United States. First, I just want to say that we believe this is a huge step forward for the welfare of dogs in puppy mills, and we applaud the agency for issuing this rule. We really look forward to reading the rule, and my question was do you have a specific date next week when it will be in the Federal Register?

Christine Jones: No it's being sent over to the Federal Register this week so we don't have a specific date, we like to do our roll out as we send it over there versus when it can magically just appear in the reading room. So no, I don't have a specific date for you, but Hallie will be able to get in touch with you and let you know.

Tracie Letterman: Okay. Great, thank you.

Operator: Thank you our next question comes from Arnold Goldman of Connecticut Veterinary Medical Association; Your line is open.

Arnold Goldman: Thank you for taking my call, I also feel this is a timely measure, but what I wanted to know is: There are many ways that consumers can obtain a dog over the

internet. Do you envision in the future the agency taking a position similar to this for shelter and rescue dogs that are shipped interstate great distances?

Kevin Shea: Well if they are sold, they come under this rule.

Arnold Goldman: Yeah, and that's the definition of the word "sold" is, you know, is what affects that. I mean, when fees are exchanged that are considered adoption fees, you know, that's widely considered not to be sold. But I think that's a point that needs examination.

Kevin Shea: Yeah we appreciate that very much and again one of the kinds of things that we will need to consider and we will really welcome comments on it.

Arnold Goldman: Thank you.

Operator: Thank you our next question comes from Cori Menkin of ASPCA/HSUS; your line is open.

Cori Menkin: Hi. Thanks. First I just wanted to echo Tracie Letterman and Cathy Liss in saying that we are just thrilled that the USDA is taking on this new regulated community. We think it's long overdue. I am just wondering if you could offer some clarity into, some more clarity actually, into that opportunity to see the premises and tell us sort of how you are defining that premises because we know that there a whole lot of breeders that are allowing purchasers to come to their property, but bringing the puppies to sort of a front room on the property or you know an area of the property where the purchaser, the potential purchaser can't see the actual breeding facility or the breeding dogs. So I was wondering if you had any insight into how that might be addressed by this rule.

Kevin Shea: The way you framed it there, that would be a retail pet store because the opportunity was there and you actually could see the animal before you picked it up. So again that's something that you might want to comment during the comment period. But our initial answer to that is that, as you described it, that entity would qualify as a retail pet store and therefore have an exemption.

Cori Menkin: Okay thank you.

Operator: Thank you, our next question comes from Frank Losey of Montana [Missouri] Pet Breeders Association; your line is open. Pardon me. Frank?

Frank Losey: Yes this is actually Frank Losey and the question that I had was, as an individual, if the proposed regulation goes into effect and individuals that have been selling over the internet have to apply for a license, is there is going to be any expedited procedure whereby they will be able to submit their application and be able to obtain a license without them having to wait too long, so as not to have to get rid of all of their dogs before they can get a license. Is there going to be an expedited procedure to allow the individual new applicants to obtain a license without the inspection?

Kevin Shea: We will ask Christine Jones, our National Enforcement Coordinator, to address that.

Christine Jones: Thank you for the question. We are still working out our implementation plan for this rule. But I will note that in the past, I believe more than five years ago, probably ten years ago at this point, we phased in the regulation of foreign air carriers, and at that time we had a similar situation where we had a number of new entities that we needed to bring under our requirements, and in order to accommodate that, we allowed a grace period where people came to us and self-identified as a new regulated entity. We put them in the queue and didn't hold against them the fact that they continued to operate while we may get to them. So that may be something that we will consider here, when we do get to the final rule stage we will make it clear how we plan to implement this rule and bring new entities on board.

Frank: Thank you.

Operator: Thank you. Once again, if you would like to ask a question, please press star, then one on your touch tone telephone, and our next question is from Whitney Miller with CAVA [AVMA]; your line is open.

Whitney Miller: Hi. I am Whitney Miller with the AVMA and the legislation that's currently in front of Congress that addresses the same issue includes requirements for exercise of the dogs in these facilities. Is there any plan at the USDA to address that issue as well in further regulation?

Kevin Shea: This particular revision does not address exercise. There are already some provisions in the regulations about exercise, but this one does not have any new requirement.

Whitney Miller: And is there is no plan at this point to change any of those regulations that you know of?

Kevin Shea: Not at this time.

Whitney Miller: Thank you.

Operator: Thank you, we have a follow up question from Tina Perriguet; your line is open.

Tina Perriguet: Hi, thank you. I just want to clarify-- I didn't have a chance to read this carefully but as I understand it, this will widen the net, per se, of breeders that will be brought under the definition and overview of the Animal Welfare Act. And one concern that we have is that, in doing so, they are going to sweep up large numbers of the most highly ethical and responsible breeders of working dogs that we have in this nation; and again this is the country that is suffering a severe shortage of the working dogs that we

need to protect, defend and provide essential services to Americans, okay; and a big part of the way highly ethical working dog breeders breed and produce them and do imprinting of these high quality working dogs is they are literally, you know, the mother lives in the home, okay, she whelps the litter in the home, whether it's in the living room or in the bedroom or in an office, and there is early imprinting done and all of this environmental work is done in the early weeks of these puppies. That all has to do with being raised in a nurturing home environment. And one very strong concern I have here is that this may end up being a rule that could possibly be the poster child of the law of unintended consequences; and correct me if I am wrong, it seems as though the breeders that I'm describing, they are going to be brought under the Animal Welfare Act by its very definition, which means, ironically, that these breeders would not be able to produce these wonderful dogs and puppies inside the home because they can't comply with the rules and regulations of the Animal Welfare Act which is, as you guys know, it is very, very strict. There are all these rules about exhaust, the environment, and it's basically for like a kennel environment where you can sterilize something with scalding hot water and bleach and you can't do that in a living room - you know what I am saying? Can you address those concerns, because they're very valid, in our opinion.

Dr. Gerald Rushin: Yes ma'am this is Dr. Rushin again. One key provision in this regulation is that dogs are used as pets. We do not consider working dogs to be used as pets so they are not covered under this regulation. I think that's the question that you are trying to ask - correct?

Tina Perriguet: Okay, yes and that's-- You know what, to a person who is not a working dog expert, that seems like a perfectly reasonable response, but Dr. Rushin, this is what I want, I need to clarify. With working dogs, there is no bright line legally between working dogs and pet dogs, okay? For instance right now I am talking to you from my home office and I have two working German Shepherd Dogs here staying in my living room, okay, and they come from one of the best producers of some of the best search and rescue and law enforcement dogs in the history of our nation. But these dogs are legally pet dogs, okay, and so it's easy to say, oh this doesn't apply to working dogs [audio fades]. --- the ones I have right here. So this is a concern that has never really been addressed when these rules or regulations and laws are being made in this country, and that's why we appreciate the fact that we now have a seat at the table because this is something that's really, really needs to be clarified.

Christine: Thanks, Tina, for your concern. Again, this is exactly why we have the comment period; we definitely encourage you to go and post your comments on this proposed rule, thank you.

Operator: Our next question comes from Debra Price with ASPCA; your line is open.

Debra: Hi this is Debra Price from the ASPCA. I want to echo everyone else who said thank you for taking this great step towards closing this loophole. I had a question about enforcement. I wonder if you have contemplated an enforcement plan for monitoring internet sales or how you have thought about taking that on.

Christine Jones: Thank you for the question, Debra, I appreciate it. We, as I mentioned before, we are still considering how best to implement this rule once and if it's finalized. At this point in time we are thinking that it will be a multifaceted approach that we take to identify potentially regulated entities. There are a number of mechanisms currently by which entities come to our attention. For example, some entities self report; they come to us and let us know that they are engaging in regulated activities or wish to so engage in those activities and at that time we will provide them with the necessary information regarding licensing. Additionally, we receive some complaints about facilities that are engaging in regulated activities. We also know of facilities that are regulated at the state level, by states that have welfare regulations and standards in place for retailers. And finally we also have some additional mechanisms that we're contemplating. So you know, we're taking a look at that issue, we have a couple of different approaches that we can take and it's something that we are looking closely at at this stage. I do want to emphasize that self-reporting and facilities coming forward is the preferred approach and that's something that we are going to highly encourage entities to do.

Debra: Thank you Christine.

Operator: Thank you, we have another follow up question from Tina Perriguet; your line is open.

Tina Perriguet: Hi. This is a bit of a follow up. I talked about the fact this is going to bring highly qualified ethical working dog breeders under the review of the Animal Welfare Act and that opens up another issue that I would like to share and address, which is the fact that this leads to potential Fourth Amendment violations, because these breeders all produce these dogs and have their puppies inside the home, and with all this, we are going to have federal agents, I am not sure if that's the correct term, but basically--federal inspectors I guess is a better term--who are going to, in theory, be sort of given legal entry into the home when no violation, no law has been broken. In a sense, law-abiding American citizens are just going about their day-to-day lives and all of a sudden, federal inspectors are allowed to come into the home and inspect them and that's a huge Fourth Amendment issue.

Christine Jones: And thank you again for your comments. Again, we would encourage you to go and comment on the proposed rule at the Federal Register, thank you.

Operator: Once again, if you would like to ask a question, please press star then the number one on your touch tone telephone. I am showing no further questions. I am sorry, we do have another question. We have a question from Sheila Goffe with American Kennel Club; your line is open.

Sheila Goffe: I apologize if my question has already been asked, I just joined the call late. I was wondering if you could clarify for us the reference to what I understand is based on face-to-face contact with individuals with respect to selling a dog and does that, would that include electronic media? Because a lot of people have ongoing relationships

with breeders they choose to purchase pet from across the country; they know that individual. Is this stating that a person would in fact have to go cross the country to pick that dog up? And also-- Well, why don't you answer that question first?

Kevin Shea: If they are a breeder they should already have a license as a breeder as opposed to a retailer seller. But if they are a retail seller they will need to have a license. It doesn't necessarily mean a person has to pick their dog up there. It means that they have to have a license.. So these are the either/or choices. Either a license or your entire mode of business is selling the dogs to people who literally come into your premises to see the dogs and walk away with the dog.

Sheila Goffe: Yes that clarifies [Indiscernible] [00:28:35]. So my question really was, for example, if you have developed a relationship with a breeder already, is this going to require fairly expensive travel for potential purchasers of a puppy. You know, I think this is a problem for very small breeders whodo not see a lot of sales, and again in the case of very small, litter numbers and so on.

Kevin Shea: There is an exemption for anyone with four or fewer breeding females.

Sheila Goffe: And that would be intact females, correct, so that's not necessarily females that are being bred.

Kevin Shea: Well that's something we discussed earlier that's not completely defined in the rule that we welcome comments on.

Sheila Goffe: Okay.

Kevin Shea: Every animal that is capable of reproducing is a breeding female but we welcome comments on that, if there is some if you have already made before you are able to call --.

Female Speaker: Yes, I apologize -- they probably were---

Dr. Gerald Rushin: If some others have some similar questions like exactly what is a breeding female, we welcome comments that will help us define it.

Operator: Thank you, we have one more follow up question from Tina Perriguet; your line is open.

Tina Perriguet: You know, actually, I think that was --.

Operator: Sorry Ms. Perriguet, your line is breaking up.

Tina Perriguet: I am sorry, my follow up question basically-- Again it's an area of concern, okay I-- It seems as though-- And I have seen this term presented over and over again and it's the term loophole and it seems to indicate that there is a problem that needs

to be corrected or plugged. So going back to this, let's kind of like just cut to the chase on numbers. I think that everybody on this call, we can safely assume has concerns and we share our desire to, you know, have a very, very effective and efficient manner with-- I won't use the term puppy mill because frankly, that term has lost all meaning. The number has been constantly lowered to a point where the general term puppy mill really has been rendered meaningless, okay. So let's call what we are talking about large substandard breeding operations. Okay, let's use that term in place of that other term, that in our opinion is -- Those should be the focus of the Animal Welfare Act in terms of regulation and enforcement, and it's clear that, you know, there have been-- We all know about that report that showed that this hadn't been dealt with properly, and so my question is: Why in a time when our government is so short on dollars, why aren't dollars being spent focusing on dealing with that problem instead of greatly expanding the purview of the Animal Welfare Act to a point where those important dollars are going to be spread so thin, the real problem isn't getting dealt with.? I don't understand the philosophy behind this great widening of the net.

Kevin Shea: Well let me say a few things if I may. One, the Congress enacted this law over forty years ago and exempted retail pet stores as retail pet stores were understood at the time, which was indeed brick and mortar places where folks went in and picked out their puppy, and that's simply not how many operate today. So we are updating the definition in the implementing regulations of the Animal Welfare Act to restore the intention of the Animal Welfare Act to deal with retail pet stores in a different way from things that are not retail pet stores.

Tina Perriguet: Well you know what --.

Kevin Shea: Let me finish, please. And in terms of the enforcement we indeed do focus on the worst actors. We have a risk based inspection system, and any time we find violations, we go back to that violator far more often than we do anybody else. So we do indeed have a complete focus on those folks and that will continue to be our intention.

Tina Perriguet: Okay, well, in terms of the term loophole, Doris Day Animal League brought a lawsuit several years ago alleging that this was a loophole and this has moved up the courts and the courts of the United States of America have declared that this is not a loophole. Okay, and I know the Humane Society of the United States is unhappy with that core verdict and they have tried to find many ways to keep calling it a loophole, but the fact is that this is-- I mean this is settled law as far as the courts are concerned and it looks as though the Humane Society of the United States is now trying to find a way to get around that law through the regulatory agency and I don't think that the answer has really been-- I still don't think we have really answered the questions about why we are not focusing our large substandard [facilities].

Kevin Shea: We are focusing on large substandard facilities; we have been, we continue to do so. The fact remains we believe that some of those large substandard facilities are the ones we are now bringing under regulation and in terms of the case you are talking about, the court simply upheld what had been the agency's interpretation of what a retail

pet store does – is – and courts generally give deference to the implementing agencies on such regulations. And the Congress left it up to USDA to define retail pet store and we are changing that now, as many have said on this call, probably belatedly, frankly, to reflect what a retail pet store really is today, not what it was in 1966. Now we have every confidence, I might point out, from all the legal advice that we have had internally here in the department and others who have reviewed this, that it would certainly be considered an appropriate exercise of federal activity under this proposed regulation.

Tina Perriguet: Even when that means inspectors are entering the homes of law-abiding citizens and the violation of the Fourth Amendment? Has that been discussed?

Kevin Shea: Please send your comments or have your lawyer send your comments. We will be happy to address them as we go along.

Tina Perriguet: Okay.

Operator: Thank you we have another question on the line from Michael Maddox with PIJAC; your line is open.

Michael Maddox: Yes I appreciate that, I just wanted to comment that the caller before me is obviously correct that the DDAL law suit did seek to modify the definition of retail pet store. But that definition– They were doing something a little bit differently and it really related to breeders more than to internet facilities, and I just think that perhaps-- I am not commenting on the ultimate rule in this case but I think maybe it might behoove us to wait and see how the rule is actually crafted before commenting on that particular point.

Operator: And I am showing no further questions in the queue at this time.

Christine Jones: Great, well thanks everybody for joining us today and again the proposed rule will be in the Federal Register next week, so please send your comments. Thanks again and have a great afternoon.

Operator: Ladies and gentlemen, this does conclude the conference. You may all disconnect at this time. Everyone have a great day.

[00:37:54]

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